

APPEAL NO. 042285
FILED OCTOBER 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 16, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th quarter.

The claimant appealed, principally on a sufficiency of the evidence basis, contending that she had not been released to return to work. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the 11th quarter. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made.

In this case the claimant, a physical therapy technician, sustained a low back strain and right knee injury. The parties stipulated that the qualifying period at issue was from January 2 through April 1, 2004. The claimant had right knee surgery on January 8, 2004, and claims a total inability to work until at least February 16, 2004, after which she made and documented six job contacts.

While the right knee surgery would indicate a total inability to work for some period of time the record does not contain a narrative report from a doctor which specifically explains how the compensable injury causes a total inability to work. In fact the treating surgeon in two reports, during the qualifying period, lists claimant's "Work Status: Retired." The hearing officer cites a report dated April 30, 2004, from the carrier's required medical examination (RME) doctor, stating that the claimant could work in "a light duty status, essentially performing sedentary work, answering

telephones . . .” as a record that the claimant is able to return to work. The hearing officer determined that the claimant had some ability to work and that determination is supported by the evidence.

The claimant clearly did not look for employment and document her job search efforts every week of the qualifying period or even every week of the qualifying period after February 16, 2004, when the claimant, by her own testimony, felt she had sufficiently recovered from her knee surgery to look for work. The hearing officer commented that “what little job search [the claimant] made [was] not in a good faith attempt to obtain employment” and that the claimant was not entitled to SIBs “on the ground of a hybrid combination of inability to work for part of the qualifying period and a good faith job search for the rest of it.”

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer’s decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge